

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of

AMY E.,

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH No. L 2007050047

DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on June 4, 2007, in Culver City, California.

Pattie E. and Richard E., mother and father of Amy E. (Claimant), represented Claimant.¹ Claimant was not present.

Lisa Basiri, Westside Regional Center Fair Hearing Coordinator, represented the Westside Regional Center (Service Agency).

The parties submitted the matter for decision on June 4, 2007.

FACTUAL FINDINGS

1. The question in this matter is whether the Service Agency must pay \$3,879, the cost of Claimant's participation in a 26-day summer camp program.

2. Claimant contends the Service Agency should pay the total cost of the summer program because the program meets Claimant's disability-related needs.

3. The Service Agency contends that it need not fund the program because Claimant's summer school, through her public school district, constitutes an available generic resource that can provide Claimant an appropriate summer program.

¹ Claimant's and her representatives' surnames were reduced to their first initials to maintain Claimant's confidentiality.

4. On March 15, 2007, the Service Agency denied Claimant's request to reimburse her the cost of the requested summer camp program (described in Factual Finding 5). On March 23, 2007, Claimant, through her parents, appealed the denial and this action ensued.

5. In or about February 2007, Claimant's parents paid \$3,879 to enroll Claimant in a residential summer camp program to be held between July 20 and August 14, 2007. An organization called Camp Ramah of California, Inc. offers a residential summer program, the Tikvah program, within its summer camp. Claimant wants to participate in the Tikvah program. The Tikvah program is designed for adolescents between the ages of 11 and 18 with learning, emotional, and/or developmental disabilities. The camp advertises that its program provides its campers with an opportunity "to have fun" and "make friends." The campers with disabilities are included in activities with their non-disabled peers throughout the day.

6. Claimant attended this same program the last two summers. For both of these previous summer sessions, the Service Agency paid partial costs of Claimant's camp attendance. Her participation in the previous summer camp sessions has benefited her as follows. Due to her disabilities, Claimant exhibits poor impulse control, she is vulnerable to strangers, in that she approaches and is trusting of people she does not know, and she lacks general social awareness. Claimant has limited independent living skills and cannot be left alone in her home safely. After having attended the Tikvah camp program the last two years, Claimant's parents have noticed positive changes in their daughter. Claimant has become more independent in her self-care, she has learned to verbalize her needs more, and she has become more self-confident. While Claimant has progressed, she still needs improvement in these same areas. At hearing, the Service Agency did not dispute the beneficial effects of the Tikvah program on Claimant in previous years.

7. In denying Claimant's request for summer camp funding, the Service Agency stated its reason as follows, "[t]here is a generic resource available (summer school)." The Service Agency improperly cited its "Service Standards" as the authority for its denial. (See Legal Conclusion 4.) In its letter to Claimant, dated April 19, 2007, the Service Agency further explained its reasoning:

[The Service Agency] funds the cost of summer camp programs as extended school year services. Extended [s]chool [y]ear [s]ervices are provided in accordance with the individual needs of persons attending school whose parents are unavailable to provide supervision because of their employment during customary school hours. When an individual need exceeds usual and customary fees [the Service Agency] will pay the cost that is over and above parental responsibility.

In that same letter (a letter the Service Agency proffered at hearing), the Service Agency stated that Claimant's 2007 summer school program would "not be able to provide the consistency and continuity in staffing she requires in order to continue to meet her educational needs."

8. Claimant is 17 years old. Her current Individual Program Plan (IPP) describes Claimant's need to increase her social skills and learn to live independently. Regarding her current attainment of social skills, Claimant's IPP states: "[o]n her last IPP[,] one of [Claimant's] goals was to increase her social skills. The IPP team agreed that this goal is unmet." Regarding her independent living skills and social needs, Claimant's IPP states: "[Claimant's] goals for the upcoming year are to become more aware of safety issues (specifically talking to strangers), to need less attention, and to learn more about living independently." Claimant's IPP further states, "[a]ll members of the planning team are hoping and planning for [Claimant] to live independently." Claimant's IPP confirms Claimant's parents' testimony that she "requires constant supervision."

9. According to her IPP, Claimant has autism and bipolar disorder. At hearing, Claimant's parents asserted she has mental retardation. The parties did not dispute that Claimant has a developmental disability, nor did the parties dispute her needs as described in her IPP.

LEGAL CONCLUSIONS

1. Cause exists to grant Claimant's appeal, as set forth in Factual Findings 1-9, and Legal Conclusions 2-11.

2. Welfare and Institutions Code section 4512 states in pertinent part:

[¶] . . . [¶]

(b) "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to . . . recreation . . . camping . . . daily living skills training . . . [and] social skills training.

3. Welfare and Institutions Code section 4648 states in pertinent part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to all of the following:

- (a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan.

[¶] . . . [¶]

(6) The regional center and the consumer, or where appropriate, his or her parents . . . shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available.

(E) The consumer's or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers.

4. Whether the Service Agency should fund the summer camp program is a question whose answer must be based on Claimant's disability-related needs, not the Service Agency's internal service standards. (Welf. & Inst. Code, § 4512, subd. (b).) The Service Agency's internal standards cannot and do not supplant the Lanterman Act. (Welf. & Inst. Code, § 4500 et seq.) The Service Agency's internal standards may offer guidance on when it should fund camp programs. However, according to the proper standard, the law, Claimant is deemed to need a service if that service is directed toward her social, personal, physical, or economic habilitation, or if it helps her achieve and maintain an independent, productive, and normal life. (Welf. & Inst. Code, § 4512, subd. (b).) Therefore, the Service Agency cited improper authority for its denial of Claimant's request for services. (Factual Finding 7.)

5. Claimant seeks camp funding as a new service for this year. As the requestor of a new service, Claimant bears the burden to prove by a preponderance of the evidence that the Service Agency should fund the requested service. Thus, Claimant must prove the summer camp program will meet her disability-related needs. (Welf. & Inst. Code, §§ 4512, subd. (b); 4648, subd. (a)(1).) Claimant met her burden.

6. According to the Lanterman Act, to determine whether a service is needed, one must consider the following: Claimant's need, Claimant's and her family's preference, the range of options, the effectiveness of each option in meeting her IPP goals, and the cost effectiveness of each option. (Welf. & Inst. Code, § 4512, subd. (b).)

7. In explaining its denial, the Service Agency equated summer camp with extended school year services and then relied on its service standards to say it can, at most, pay "the cost that is over and above parental responsibility" (Factual Finding 7) (though here, there was no offer to pay partial costs). Here, the Service Agency's position was that Claimant was not entitled to any cost coverage by the Service Agency because the 2007 summer school session is available to Claimant. However, the Service Agency admitted that Claimant's summer school program could not provide appropriate staffing. (*Ibid.*) No contradictory evidence was offered. Therefore, the summer school program is not an available generic resource to meet Claimant's needs. Furthermore, the Service Agency never explained why it equated the summer camp to extended school year services, when the Lanterman Act includes both camp and recreation as services available to Claimant in their own right. (Welf. & Inst. Code, § 4512, subd. (b).) There was no evidence or legal argument as to why the summer camp program had to meet the Service Agency's requirements for extended school year services. It need not. (*Ibid.*; see also Legal Conclusion 4.)

8. Claimant established her need to develop her social skills and independent living skills. Those needs were described clearly in her IPP and undisputed by the Service Agency. No evidence established a change in Claimant's abilities or needs since the IPP was written. There was no evidence of other appropriate alternative services available to Claimant. The evidence did show the Tikvah program is available and appropriate to meet Claimant's needs to further develop her social skills and aspects of her independent living skills. (Factual Findings 5, 6 & 8.) Moreover, the Service Agency's partial payments in the previous two years supports the conclusion that the Service Agency agrees the Tikvah program can and has met Claimant's needs in the past. Claimant also established her and her family's preference for the Tikvah program. (Factual Finding 5.)

9. Claimant further established that, over the past two years, the Tikvah program has been effective in meeting her needs for social skills development and developing aspects of independent living skills. (Factual Finding 6.) Thus, while Claimant established the effectiveness of the Tikvah program in meeting her IPP goals, the evidence failed to establish the same for the summer school program provided by Claimant's public school district, or any other potentially available service.

10. The Service Agency did not assert or argue that the Tikvah program was not cost-effective. Given that the Tikvah program meets Claimant's current IPP needs and has benefited Claimant's disability-related needs the past two years, the cost of the Tikvah program is deemed cost-effective.

11. Therefore, the Service Agency's payment of the Tikvah summer camp program is appropriate and in accordance with the requirements of the Lanterman Act. (Welf. & Inst. Code, §§ 4512, subd. (b); 4648, subd. (a)(1) & (a)(6).)

ORDER

Claimant's appeal is granted. The Service Agency shall pay Claimant's parents \$3,879 for Claimant's enrollment in the Tikvah program through Camp Ramah of California, Inc., for the summer session beginning July 20, 2007 and ending August 14, 2007.

Dated: June 15, 2007

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

THIS IS THE FINAL ADMINISTRATIVE DECISION. THIS DECISION BINDS BOTH PARTIES. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS.